



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R8–ES–2020–N081; FXES11140800000–212–FF08ECAR00]

### **Proposed Programmatic Safe Harbor Agreement for the California Red-Legged Frog; Orange, Riverside, and San Diego Counties, California; National Environmental Policy Act Documentation/Categorical Exclusion**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an enhancement of survival (EOS) permit application from the Service’s Carlsbad Fish and Wildlife Office that includes a proposed safe harbor agreement (SHA) in southern California for the federally threatened California red-legged frog. If granted, the SHA would provide for California red-legged frog recovery by providing a framework to reestablish frogs within their historical range. The EOS permit would be in effect for a 30-year period and would authorize take of the California red-legged frog incidental to the implementation of the Programmatic Safe Harbor Agreement in Orange, Riverside, and San Diego Counties, California. The documents available for review and comment are the SHA and National Environmental Policy Act documentation that supports a categorical exclusion. We invite comments from the public and Federal, Tribal, State, and local governments.

**DATES:** Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request

or comments are in reference to the “California red-legged frog SHA for Orange, Riverside, and San Diego Counties.”

**Obtaining Documents:** You may obtain the applicant’s safe harbor agreements and the National Environmental Policy Act documentation from the internet at <https://www.fws.gov/Carlsbad>.

**Submitting Comments:** You may submit written comments by the following method:

- *Email:* [fw8cfwocomments@fws.gov](mailto:fw8cfwocomments@fws.gov). For additional information about submitting comments, see the **Public Comments Solicited** section below.

**FOR FURTHER INFORMATION CONTACT:** Scott Sobiech, 760–431–9440. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from the Service’s Carlsbad Fish and Wildlife Office for an enhancement of survival (EOS) permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The requested 30-year permit would authorize the incidental take of the California red-legged frog (*Rana draytonii*), which is federally listed as threatened, in exchange for conservation measures that are expected to provide a net conservation benefit for the species. The application includes a proposed SHA that describes allowable land uses and the conservation measures that are intended to produce a net conservation benefit for the California red-legged frog on non-Federal lands in Orange, Riverside, and San Diego Counties. Non-Federal property owners may enroll in this SHA, so long as the SHA remains in effect.

## **Background**

Section 9 of the ESA and the implementing Federal regulations in effect at the time the California red-legged frog was listed prohibit the take of animal species listed as endangered or threatened. For the California red-legged frog, the take prohibitions as

outlined in 50 CFR 17.31 apply, except that incidental take of California red-legged frog is not prohibited if resulting from routine ranching activities (as described in 50 CFR 17.43(d)(3)(i)–(xi) on private and tribal lands. “Take” is defined under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1532(19)). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. “Incidental taking” is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found at 50 CFR 17.22 and 50 CFR 17.32.

Under SHAs, private and non-Federal participating landowners voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). SHAs, and the subsequent EOS permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation efforts for listed species, by assuring property owners that they will not be subject to increased land use restriction as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. In this case, an ESA section 10(a)(1)(A) EOS permit is proposed to be issued to the Service’s Carlsbad Fish and Wildlife Office under a programmatic SHA providing a specific level of incidental take coverage should the enrolled landowners’ agreed-upon conservation measures and routine land uses (e.g., recreation, ranching,

agriculture, and maintenance activities) result in take of the covered species.

Application requirements and issuance criteria for EOS permits through SHAs are found at 50 CFR 17.22(c) and 17.32(c).

### **California Red-Legged Frog**

The California red-legged frog is currently extirpated from its former range in Southern California south of the Transverse Ranges. It was last recorded in Riverside County in the early 2000s. Population declines have been attributed to habitat loss and degradation including introduced predators, water diversions, and poor water quality. Eligible lands under the SHA include aquatic (e.g., streams, creeks, ponds, and marshes), riparian, and adjacent upland habitat where threats to frogs have been addressed and minimized. Primary conservation measures implemented under the SHA include reintroductions, habitat management, and the minimization of potential threats (e.g., bullfrog predation and sedimentation). Additional conservation measures include allowing agency staff to monitor frogs and their habitat and to salvage/rescue frogs when necessary. Covered land use activities include recreation, ranching, agriculture, maintenance activities, and ongoing activities associated with the enrolled lands.

If California red-legged frog populations become established within the eligible lands covered under the SHA, take of California red-legged frogs associated with the approved land uses and conservation measures outlined under the certificate of inclusion for enrolled lands would be authorized under the EOS permit during the 30-year permit term. The proposed SHA would implement conservation measures that contribute to the recovery of the California red-legged frog. The proposed SHA with the option for renewal is based on the commitment to implement the proposed SHA, including issuance of certificates of inclusion to participating non-Federal landowners. The reestablishment of the Southern California genetic lineage is an important conservation action for the species' recovery. Therefore, the cumulative impact of the

SHA and the activities it covers, which are facilitated by the allowable incidental take, are expected to provide a net conservation benefit to the California red-legged frog.

### **Public Comments Solicited**

We solicit written comments on the proposed safe harbor agreement and National Environmental Policy Act documentation described in this notice. All comments received by the date specified in **DATES** will be considered in development of a final safe harbor agreement for the California red-legged frog. You may submit written comments and information by email to the Service's Carlsbad Fish and Wildlife Office at the above address (see **ADDRESSES**).

### **Public Availability of Comments**

Written comments we receive become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organization or businesses, and from individuals identifying themselves as representative or officials of organization or business, will be made available for public disclosure in their entirety.

### **Authority**

We provide this notice under Section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations for the Department of the Interior (43 CFR part 46).

**Scott Sobiech,**

*Field Supervisor,*

*Carlsbad Fish and Wildlife Office,*  
*Carlsbad, California.*

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